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No. 85-372

In The
Supreme Court of the United States
October Term, 1985

ELAINE CHRISTENSEN, *et al.*,
Petitioners,

vs.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF AMICUS CURIAE

Richard B. Brown, Esq.
Faulkner, Banfield,
Doogan & Holmes
2550 Denali Street, Suite 700
Anchorage, Alaska 99503
Telephone: (907) 274-0666

Allan E. Tesche, Esq. *
Faulkner, Banfield,
Doogan, & Holmes
2550 Denali Street, Suite 700
Anchorage, Alaska 99503
Telephone: (907) 274-0666

* Counsel of Record

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BRIEF AMICUS CURIAE

I

INTEREST OF AMICUS

This brief is filed in support of petition for certiorari, the written consent of all parties having been granted. The amici urge that the court grant the petition, for the

difficulties created by the conflict between the Ninth and Eighth Circuit Courts of Appeal have not been suffered only by the petitioners. They extend to other allotment claimants who have been deprived of substantial rights due to overreaching conduct by the government.

Ms. Kendall and Mr. St. Clair are parties to litigation pending before the United States District Court for the District of Alaska which involves precisely the same legal issues presented in the petition for certiorari. Their complaint, which was filed in their capacities as the heirs of their late father, claims relief under 25 U.S.C. § 345 and seeks a judicial declaration that a conveyance of their father's Indian allotment was solicited and coerced by the government in violation of the provisions of the Alaska Native Allotment Act of 1906, 34 Stat. 197. Allotment claims asserted under the provisions of that Act are within the purview of 25 U.S.C. § 345. *See, Pence v. Kleppe,* 529 F.2d 135, 138-139 (9th Cir. 1976).

The government has filed a motion to dismiss the complaint of the proposed amici. Its motion asserts that the limitations in 28 U.S.C. § 2401(a) are applicable to actions brought under 25 U.S.C. § 345. The motion to dismiss has been fully briefed, but further proceedings before the District Court have been stayed pending a final disposition of the case at bar. *See,* Appendix A.

Shirley Kendall and Kelly St. Clair are Tlingit Indians whose family has long resided in Hoonah, a small community located on Chichagof Island in southeastern Alaska. As noted in the motion, they have filed suit in their capacities as the heirs of the late Frank St. Clair seeking to recover a 9.4 acre allotment of land located

north of Hoonah in Glacier Bay National Monument. They claim relief under 25 U.S.C. § 345. The factual basis for the claim of the amici is described in the complaint attached to this brief as Appendix B.

Frank St. Clair's original application for an allotment was submitted on April 15, 1915 pursuant to the Alaska Native Allotment Act of 1906, 34 Stat. 197. His application sought 160 acres of land located to the north of Hoonah, in what is now Glacier Bay National Monument. It is not disputed that on October 24, 1930, the United States Department of the Interior approved the application and granted Mr. St. Clair a 9.4 acre parcel subsequently designated as U. S. Survey 1954. It is also undisputed that in 1941 the United States executed a certificate of allotment stating that the parcel "shall be deemed to be the homestead of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable until otherwise provided by Congress".

In 1955, Mr. St. Clair executed a deed to his allotment naming the United States as grantee. His heirs allege that he executed the deed only because the conveyance was coerced by employees of the National Park Service who repeatedly told him that it was unlawful to hold title to land in Glacier Bay National Monument and threatened to have the land taken from him without compensation. These representations, though manifestly untrue, frightened Mr. St. Clair into agreeing to sell the land for $891.00. He never received a penny of the purchase price from the government, however, due to the fact that the Bureau of Indian Affairs remitted the money to the federal Public Housing Administration to satisfy a

debt which the latter agency was making no effort to collect and which was ultimately forgiven.

If given an opportunity to litigate their claims on the merits the amici will prove the facts outlined above and demonstrate that the government breached its fiduciary duties to themselves and their father. They will also establish that the conveyance was made in violation of a provision of the 1906 Act expressly stating that allotted lands were inalienable.[1] These legal deficiencies render Frank St. Clair's conveyance void *ab initio*. *See, Smith v. McCullough,* 270 U.S. 456 (1926) (lease negotiated for term inconsistent with allotment act's restriction on alienation held void). The amici have substantial claims to assert and are seeking to remedy a serious injustice. If the government is permitted to assert the limitations in 28 U.S.C. § 2401(a) as a bar to relief under 25 U.S.C. § 345 they will lose the opportunity to have their claims heard on the merits.

II

THIS COURT HAS PREVIOUSLY RECOGNIZED THAT THE ADOPTION OF THE 1948 REVISIONS TO THE JUDICIAL CODE WERE NOT INTENDED TO BRING ABOUT A WHOLESALE CHANGE IN SUBSTANTIVE RIGHTS

The petitioners have presented a discussion of the roots of 28 U.S.C. § 2401(a) which persuasively demonstrates that the statute's origins in the 1948 Judicial Code were not intended to impact actions relating to Indian allotments filed pursuant to 25 U.S.C. § 345. Their argu-

---

[1] The relevant text of the 1906 Act is quoted in paragraph 20 of Appendix A.

ment is further buttressed by decisions of this court, which has observed that every change in the text of the Code is explained in detail in the Revisor's Notes and has further recognized that:

> Statements made by several of the persons having importantly to do with the 1948 revision are uniformly clear that no changes of law or policy are to be presumed from changes of language in the revision unless an intent to make such changes is clearly expressed.

Fourco Glass Co. v. Transmirra Products Corp., 353 U.S. 222, 227 (1957). *Accord, Muniz v. Hoffman*, 422 U.S. 454, 472 (1975). ["A change in the language of a statute itself was not enough to effect a substantive change for 'every change made in the text is explained in detail in the Revisor's Notes' . . . and the notes fail to express any substantive change (citations omitted).] As petitioners have noted, nothing in the Revisor's Notes indicates that the 1948 Code was intended to expand the bar of the six year statute of limitations to cover claims based on allotment legislation.

III

ACTIONS INVOLVING THE TRUST RESPONSIBILITY OF THE UNITED STATES TO INDIANS ARE NOT SUBJECT TO LIMITATIONS PERIODS

It is beyond question that allotment legislation creates a trust relationship between the government and allotment claimants with reference to the administration of allotment programs. *See, United States v. Mitchell*, 462 U.S. 206 (1983). Though there are limits on the scope of the government's trust duties concerning allotments, clear-

ly misrepresentations and threats directed at allottees in an effort to obtian a relinquishment of statutorily inalienable land constitutes a breach of fiduciary duty.

Application of 28 U.S.C. § 2401(a) to claims such as those asserted by petitioners and the amici ignores the well-established doctrine that statutes of limitation do not apply to bar suits by beneficiaries against their trustees for breach of fiduciary duty. This rule was applied in the Indian law context by *Manchester Band of Pomo Indians v. United States,* 363 F.Supp. 1238 (N.D. Calif. 1973), where the court ruled specifically on the applicability of § 2401(a) in an action by a tribal group to recover damages for a failure by the government to manage trust funds properly. The court stated:

> [W]here as here, there is a fiduciary duty between the parties, the universal rule is that "a statute of limita tions does not begin to run where there is a fiduciary relationship between the parties until the relationship is repudiated." . . .
>
> Thus, the statute does not run against the beneficiary in favor of a trustee until the trust is repudiated and the fiduciary relationship terminated.
>
> * * *
>
> [T]he reason for such a rule "concentrates on the necessity of dealing fairly with a group of people still placed under a disability of dependency and to which a greater obligation is owed than a narrowly legalistic view of what constitutes a technical 'duty'."

Id., at 1249. Under such circumstances, it would violate public policy to interpret 28 U.S.C. § 2401(a) as barring the claims of petitioners and Shirley Kendall and Kelly St. Clair.

IV

CONCLUSION

For the reasons set forth above and in the petition for certiorari the writ sought by petitioners should be granted.

Respectfully submitted this 1st day of October, 1985.

Richard B. Brown, Esq.
Faulkner, Banfield,
Doogan & Holmes
2550 Denali Street, Suite 700
Anchorage, Alaska 99503
Telephone: (907) 274-0666

Allan E. Tesche, Esq. *
Faulkner, Banfield,
Doogan, & Holmes
2550 Denali Street, Suite 700
Anchorage, Alaska 99503
Telephone: (907) 274-0666

* Counsel of Record

APPENDICES

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

SHIRLEY KENALL and KELLY ST. CLAIR,
Heirs of Frank St. Clair,

Plaintiffs,

vs.

WILLIAM P. CLARK, Secretary of the U. S.
Department Of Interior and the

UNITED STATES OF AMERICA,

Defendants,

Case No.: A83-593 Civil

STIPULATION FOR EXTENSION OF STAY

(Filed August 5, 1985) .

WHEREAS, on April 8, 1985, the court approved a stay of further proceedings in the above entitled matter pending the determination on the petition for rehearing and rehearing *en banc* filed with the U. S. Court of Appeals for the Ninth Circuit by the plaintiff-appellants in *Christensen, et al. v. United States of America, et al.;* and

WHEREAS the Court of Appeals has issued an order denying said petition, a copy of which is appended hereto as Exhibit A; and

WHEREAS the plaintiffs-appellants in *Christensen* intend to petition the United States Supreme Court for a writ of certiorari and to ask the Supreme Court to consider the issue of the applicability of the statute of limi-

tations in 28 USC § 2401(a) to actions brought under 25 USC § 345; and

WHEREAS the government and the plaintiffs herein are in agreement that the interests of justice would be served by deferring further action in the instant case until the U. S. Supreme Court has had an opportunity to dispose of the *Christensen* case; and

WHEREAS the parties have previously stipulated that the initial stay in this matter was without prejudice to their right to seek a further stay pending action by the U. S. Supreme Court.

NOW, THEREFORE, in light of the foregoing, plaintiffs and defendants, by and through their respective counsel, hereby stipulate as follows:

1. That further proceeding in this case, including proceedings related to the government's motion to dismiss the complaint, may be stayed pending a final disposition of *Christensen et al. v. United States of America, et al.*, by the United States Supreme Court.

2. That the parties hereby undertake to notify the court of any final disposition of the *Christensen* case by the U. S. Supreme Court.

DATED this 2 day of August, 1985.

FAULKNER, BANFIELD,
DOOGAN & HOLMES

By: /s/ Richard B. Brown
Attorneys for Plaintiff

Michael R. Spann
United States Attorney

By: /s/ Deborah Smith, Assistant
U. S. Attorney, Attorney
for Defendants

ORDER

IT IS SO ORDERED this 10 day of August, 1985

cc: Richard Brown (FAULKNER)
Mark Rindner, AUSA

/s/ H. Russel Holland
U. S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1971

D.C. No. CV R-83-93

ELAINE CHRISTENSEN, ORVILLE BROWN, DORAN PETE and GLADYS WALKER,

Plaintiffs-Appellants,

UNITED STATES OF AMERICA, et al.,

Defendants-Appellees.

ORDER

(Filed June 7, 1985)

Appeal from the United States District Court
For the District of Nevada

Before: WALLACE, HUG, and SKOPIL, Circuit Judges.

The panel, as constituted in the above case, has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the en banc suggestion and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX B

Richard B. Brown, Esq.
FAULKNER, BANFIELD,
DOOGAN & HOLMES
2550 Denali St., Suite 700
Anchorage, AK 99503
Telephone: (907) 274-0666

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. A83-593

SHIRLEY KENDALL and KELLY ST. CLAIR,
Heirs of Frank St. Clair,

Plaintiffs,

vs.

WILLIAM P. CLARK, Secretary of the U. S.
Department of the Interior, and
THE UNITED STATES OF AMERICA,

Defendants.

COMPLAINT

(Filed December 1, 1983)

COMES NOW the plaintiffs, Shirley Kendall and Kelly St. Clair, heirs of Frank St. Clair, and allege as follows:

I. PRELIMINARY STATEMENT

1. Plaintiffs, heirs of Frank St. Clair, seek declaratory and equitable relief which will have the effect of regaining from the defendants title to a 9.4 acre allotment of land granted to Frank St. Clair by the United States

of America in 1941 and located at the head of Berg Bay in Glacier Bay National Monument. Defendant United States wrongfully accepted a deed to this parcel from Frank St. Clair in January of 1956 in violation of the trust obligations owing to Mr. St. Clair as an Alaska Native and the express provisions of the Act of May 17, 1906, the Alaska Native Allotment Act, 34 Stat 197.

II. PARTIES.

2. Plaintiff Kelly St. Clair, a Tlingit Indian, is a resident of Hoonah, Alaska.

3. Plaintiff Shirley Kendall, a Tlingit Indian, is a domiciliary of Anchorage, Alaska, currently residing in Cambridge, Massachusetts.

4. Plaintiffs are the sole surviving children of Frank St. Clair, who died in 1958. Plaintiffs are heirs to his estate and, as such, have succeeded to his rights to the real property which is the subject of this litigation.

5. Defendant William P. Clark is the Secretary of the U.S. Department of the Interior and has been joined herein in his official capacity. He is responsible for overseeing all operations of said Department, including the operations of the National Park Service and the Bureau of Indian Affairs.

6. The United States of America is joined as a defendant pursuant to the terms of the 5 U.S.C. § 702.

III. JURISDICTION.

7. This Court has jurisdiction over this matter pursuant to the terms of 28 U.S.C. §§ 1331, 1353, and 2201 and 25 U.S.C. § 345.

IV. STATEMENT OF FACTS

8. On April 5, 1915, Frank St. Clair, a Tlingit Indian residing in Hoonah, Alaska, applied for an allotment of land pursuant to the Act of May 17, 1906, the Alaska Native Allotment Act, 34 Stat 197. The approximately 160 acres described in Mr. St. Clair's application is located on the shores of Berg Bay in what is now Glacier Bay National Monument. Mr. St. Clair's application states that he had personally used and occupied the land described therein since his birth in 1886.

9. By decision dated October 24, 1930, the U.S. Department of the Interior (hereinafter "Department") approved Mr. St. Clair's allotment application and granted him a parcel containing 9.4 acres. The parcel was surveyed and is now designated as U.S. Survey 1954.

10. On August 28, 1941, the Department executed a certificate to U.S. Survey 1954 approving the allotment application of Frank St. Clair pursuant to the terms of the Act of May 17, 1906. This certificate stated, in pertinent part, that the land in U.S. Survey 1954

> . . . shall be deemed to be the homestead of the allottee and his heirs in perpetuity, and shall be inalienable and non-taxable until otherwise provided by Congress.

11. Mr. St. Clair's personal use of the land granted to him in the Department's certificate pre-dated all orders

and proclamations withdrawing the land from disposition under the public land laws. The land ultimately allotted to him was, thus, available for allotment, and the Department's decision that he was entitled to a Native allotment on land encompassed by his application was a lawful one.

12. Throughout the 1930s and 1940s, Frank St. Clair and his children, including plaintiffs herein, travelled from Hoonah to his Native allotment on a regular basis, usually residing there from May until early autumn. The St. Clair family constructed a house, smoke house, storage building, strawberry garden, and reservoir on the allotment and engaged in subsistence hunting, fishing, and gathering on the allotment and in the area adjacent thereto.

13. Beginning in the 1940s and continuing until 1956, personnel employed by the Department's National Park Service and Bureau of Indian Affairs repeatedly made express representations to Frank St. Clair and to plaintiffs that (a) it was unlawful for Mr. St. Clair to hold title to a Native allotment in Glacier Bay National Monument, (b) that if he did not agree to sell his Native allotment to the United States, the Department would take the land from him without compensation, and (c) that improvements he and his family had constructed on the allotment were worthless.

14. The representations described in Paragraph 13 above were false and the agents of the Department making said representations knew, or had reason to know, that they were false. Said representations were made with the intent of obtaining a relinquishment of Mr. St. Clair's interest in U.S. Survey 1954.

15. As a direct result of and in reliance on the representations described in Paragraph 13 above, Frank St.

Clair solicited purchase offers from the Department. If these representations had not been made, Frank St. Clair would have refused to convey title to his allotment and plaintiffs, as his heirs, would have succeeded to an undivided interest therein.

16. On November 21, 1955, Frank St. Clair executed a deed to U.S. Survey 1954 naming the United States of America as the grantee and reciting a consideration of $891.00 "in hand paid". This deed was approved and accepted by the Department on January 27, 1956.

17. Frank St. Clair never received the $891.00 cash consideration recited in his deed. Instead, the money was deposited in an account maintained by the Bureau of Indian Affairs and paid by the Bureau to the Federal Public Housing Administration to cover interest and principal due on the puchase by Mr. St. Clair of a house in Hoonah from the Public Housing Administration. Plaintiffs are informed and believe that the Bureau of Indian Affairs knew, or had reason to know, that the Public Housing Administration was not actively pursuing collection of loans made for the purchase of homes by residents of Hoonah, including Frank St. Clair. All such loans were ultimately forgiven by the United States government.

18. On September 8, 1983, plaintiffs demanded that defendants cancel the deed executed by Frank St. Clair and return title to U.S. Survey 1954 to his heirs. Defendant rejected the demand on October 24, 1983.

V. CLAIMS FOR RELIEF.

A. First Claim For Relief.

19. Plaintiffs reallege each and every allegation in Paragraph 1 through 18 above.

20. The Act of May 17, 1906, the Alaska Native Allotment Act, reads, in pertinent part, as follows:

> The Secretary of the Interior is authorized and empowered, in his discretion and under such rules as he may prescribe, to allot not to exceed 160 acres of non-mineral land in Alaska to any Indian or Eskimo of full or mixed blood who resides and is a native of Alaska, and who is the head of a family or is 21 years of age; and the land so allotted shall be deemed the homestead of the allottee and his heirs in perpetuity and *shall be inalienable* and non-taxable until otherwise provided by Congress.

(Emphasis added)

20. The restriction on alienation contained in the Alaska Native Allotment Act existed until passage of the Act of August 2, 1956, 70 Stat. 954, an amendment authorizing alienation of Native allotment with the approval of the Department. The deed to U.S. Survey 1954 was executed by Frank St. Clair and approved and accepted by the Department before passage of the Act of August 2, 1956, and is, therefore, void.

21. Defendants, by refusing to relinquish their claim to U.S. Survey 1954 and return title to said realty to the Estate of Frank St. Clair have unlawfully denied and excluded plaintiffs from a Native allotment to which they are entitled by virtue of their descent from Frank St. Clair and the Act of May 17, 1906.

22. Pursuant to 25 U.S.C. § 345, plaintiffs are entitled to a decree of this Court declaring that the conveyance of U.S. Survey 1954 is void and the heirs of Frank St. Clair should receive title thereto.

B. Second Claim For Relief.

23. Plaintiffs reallege each and every allegation in Paragraphs 1 through 18 above.

24. Defendant United States of America, acting through its employees and agents in the National Park Service and the Bureau of Indian Affairs, procured a conveyance of Frank St. Clair's Native allotment as a result of duress and misrepresentations more particularly described in Paragraphs 13 to 17 above.

25. As a result of the duress and misrepresentations communicated to Frank St. Clair and to plaintiffs by agents and employees of defendant United States of America, the purported conveyance of U.S. Survey 1954 is void and must be rescinded.

C. Third Claim For Relief.

26. Plaintiffs reallege each and every allegation in Paragraphs 1 through 18 above.

27. Defendant United States of America owes a fiduciary obligation to all recipients of allotments under the Alaska Native Allotment Act. This fiduciary duty extended to Frank St. Clair and plaintiffs herein at all times pertinent to this action.

28. Under the fiduciary duty described in Paragraph 27 above, defendants are obligated to assure that

allotments of land are not conveyed under terms which are unlawful or disadvantageous to the allottee and his heirs.

29. Defendant United States of America and the Department breached their fiduciary obligations to Frank St. Clair and plaintiffs by:

(a) Failing to properly inform them of their rights under the Act of May 17, 1906,

(b) Utilizing duress and misrepresentations to obtain a conveyance of U.S. Survey 1954,

(c) Failing to arrange for adequate consideration for the conveyance, and

(d) Misappropriating the consideration which was paid for the conveyance.

30. Breaches of fiduciary duty outlined in Paragraph 29 above and associated with the conveyance of U.S. Survey 1954 render that conveyance void.

VI. PRAYER FOR RELIEF.

WHEREFORE, plaintiffs pray as follows:

1. For a judicial declaration that the conveyance of U.S. Survey 1954 was unlawfully procured and is, therefore, void and that the heirs of Frank St. Clair should receive title thereto.

2. For a decree directing defendants to reconvey title to U.S. Survey 1954 to the Estate of Frank St. Clair.

3. For costs and attorneys fees in accordance with 28 U.S.C. § 2412.

4. For such other and further relief as the Court may deem proper.

Respectfully submitted this 30th day of November, 1983.

FAULKNER, BANFIELD,
DOOGAN & HOLMES

By: /s/ Richard B. Brown
Attorney for Plaintiffs